

## **REMARKS**

This Supplemental Response is being filed as a result of a telephonic interview with Examiner Kolker. Consideration of the supplemental amendment is requested. Applicants incorporate the "Amendment and Response to Office Action Dated April 30, 2008" filed June 30, 2008 by reference. The current listing of claims reflects amendments presented in the response to final Office Action since those amendments were not entered at the time of consideration. For clarity purposes Applicants have included amendments made to the claims pending at the time of the final Office Action.

### **I. STATUS OF THE CLAIMS**

Claims 14, 17, 20, 23, 24, and 29-35 were pending at the time of the Action. Claim 17, 20, 29, 32, and 33 have been canceled. Claims 14, 23, 24, 34, and 35 have been amended. Claims 36-41 are new. No new matter has been added.

Claims 14, 23, 24, 30, 31, and 34-41 are now pending.

### **II. STATEMENT OF SUBSTANCE OF INTERVIEW**

Applicants representative conducted a telephonic interview with Examiner Kolker on September 4, 2008. General claim issues were discussed. Applicant agreed to limit the number of new claims added to equal the number of claims canceled and have done so in the this supplemental response. Examiner Kolker agreed to reconsider the claims, particularly 36-41 that were newly added in the previous response, and indicate if these claims, written as suggested in the previous final Office Action, are directed to allowable subject matter.

In summary, the current claims 36-41 include sequence identifiers that correspond to the variants of claim 14, as suggested by Examiner Kolker in the paragraph spanning pages 3 and 4 of the final Office Action dated April 30, 2008. The variants include a deletion mutation which deletes an asparagine at position 43 of SEQ ID NO:67 (SEQ ID NO:410) and a G to A mutation that translates into an isoleucine instead of a valine at position 1035 of SEQ ID NO:67 (SEQ ID NO:411).

### **III. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Claims 14, 17, 20, 23, 24, and 29-33 are rejected as being indefinite for requiring a specific sequence and concurrently a variant of the specific sequence. In addition, claims 14, 17, 20, and 24 are rejected as being indefinite due to ambiguity in subpart (f) of claim 14.

Applicants have clarified the claims and addressed the indefiniteness issues raised in the final Office Action. The rejections are now moot.

### **IV. REJECTIONS UNDER 35 U.S.C. §112, SECOND PARAGRAPH, FIRST PARAGRAPH (WRITTEN DESCRIPTION)**

Claims 34 and 35 stand rejected under 35 U.S.C. § 112, first paragraph as not complying with the written description requirement. Applicants have clarified claims 34 and 35 and believe them to satisfy 35 U.S.C. §112, first paragraph. Applicants request withdrawal of the rejections.

### **V. REJECTIONS UNDER 35 U.S.C. § 102**

Claims 14, 23-24, and 34-35 stand rejected as being allegedly anticipated by Lu *et al.*

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. MPEP § 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

*Lu et al.* does not describe the claimed variants and thus all elements of the claimed invention are not described in *Lu et al.* In particular, Applicants note that GenBank accession numbers AF035685 and AF035686 encode an Asparagine at amino acid 43, contrary to the assertion in the last paragraph of page 7 in the final Office Action. *Lu et al.* does not anticipate the claimed invention. Applicants request the withdrawal of the rejection.

## **VI. REJECTIONS UNDER 35 U.S.C. § 103**

Claims 14, 17, 20, 23-24, 30-31, and 34-35 stand rejected as being allegedly obvious in light of *Lu et al.* in view of Delgado.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

For reasons set forth above *Lu et al.* when combined Delgado does not teach all elements of the claimed invention. Therefore, a *prima facie* showing of obviousness has not been established. Withdrawal of the rejection is requested.

## VII. CONCLUSION

Applicants believe that the present document is a full and complete response to the Action dated April 30, 2008. The present case is in condition for allowance, and such favorable action is respectfully requested.

The Examiner is invited to contact the undersigned Attorney at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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